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Summary of Stakeholders' submissions on Bahamas*

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review (UPR). It is a summary of four stakeholders' submissions[1] to the universal periodic review, presented in a summarized manner owing to word-limit constraints.

II. Information provided by stakeholders

A. Scope of international obligations[2] and cooperation with international human rights mechanisms and bodies[3]

2. JS1 stated that during the 2013-UPR, many countries recommended that the Bahamas ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment or its Optional Protocol. It underscored that the Bahamas had stated it would consider ratifying these treaties, but that it had not yet done so.[4]

3. JS1 stated that during the 2013-UPR, many countries recommended that the Bahamas sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights with a view toward abolishing death penalty.[5]

4. JS2 recommended that the Bahamas accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on to Reduction of Statelessness.[6]

* The present document was not edited before being sent to United Nations translation services.

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5. JS2 underscored that while the Bahamas had been a State party to the Convention on the Elimination of all forms of Discrimination against Women since 1993, it maintained reservations to both Article 2(a) and Article 9 of the Convention.[7] JS2 recommended that The Bahamas remove all reservations to the Convention on the Elimination of All Forms of Discrimination against Women and sign the Optional Protocol to the Convention.[8]

6. JS2 asserted the Bahamas had also entered a reservation to Article 2 of the Convention on the Rights of the Child, which is the general anti-discrimination clause of the Convention, which obligates States to ensure every child's enjoyment of all rights set forth in the Convention, without discrimination of any kind, including on grounds of sex, both of the child and of the child's parents or guardians. Hence, this reservation was clearly aimed at preserving gender discrimination in the Bahamas' nationality laws.[9] JS2 recommended that the Bahamas remove this reservation.[10]

B. National human rights framework[11]

7. JS1 indicated that the Constitutional Reform Commission directly addressed several of the issues raised in the 2013-UPR, including recommendations for constitutional amendments to protect human rights. The Government made amendments adopting some of these recommendations, particularly those regarding discrimination.[12]

8. JS1 asserted that since 2013, the Bahamas had taken action to implement a number of UPR recommendations, although not those related to the death penalty.[13]

9. JS2 stated that the maintenance of nationality laws which discriminated on the basis of gender were themselves in conflict with the object and purpose of the Convention on the Elimination of all forms of Discrimination against Women and with the general obligation of all State parties to agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women.[14]

10. JS2 recommended that the Bahamas accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on to Reduction of Statelessness to ensure the development of legislation and regulations which ensure every child's right to a nationality and that no child is born Stateless on The Bahamas.[15]

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Cross-cutting issues

Equality and non-discrimination[16]

11. JS2 explained that according to the Constitution of the Bahamas, a married Bahamian father who was born after independence (in 1973) could confer nationality on his children regardless of the child's or father's place of birth. However, clause 3(2) of the Bahamian Constitution stipulated that a Bahamian male, born abroad prior to independence acquires Bahamian citizenship through his father but could not readily pass on his citizenship to his offspring.[17] According to the Constitution, an unmarried Bahamian father was denied the right to confer his nationality on his children, a right reserved for unmarried mothers.[18]

12. JS2 concluded that while unmarried Bahamian women and married men born after 1973 could automatically pass on their nationality to their children born abroad, married women, unmarried men and men born before 1973 cannot. This situation amounted to discrimination on the basis of the parents' gender and marital status.[19]

13. JS2 expressed also that the Bahamas Nationality Act denied Bahamian women the right to confer their nationality on children in the case of joint adoption, while Bahamian men were permitted to confer their nationality on adopted children in all circumstances.[20] Bahamian women were also denied the right to confer their nationality on foreign spouses, a right that was reserved for men in Article 10 of the Constitution of the Bahamas.[21]

14. JS2 communicated that on June 7, 2016 a Constitutional referendum, which put to public vote the question of eliminating discrimination on the basis of sex in terms of nationality rights and endorsing the principle of equality between women and men in the Bahamian Constitution, failed to secure a majority of votes. Due to the referendum's failure, the Bahamas remained a country that still denied mothers the right to confer nationality on their children on an equal basis with men and denied unmarried fathers the right to confer nationality on children.[22] JS2 expressed that while recognising efforts undertaken to facilitate the amendment of the Bahamian Constitution and its nationality laws, the failed 2016 referendum did not preclude the Bahamian Government from fulfilling its obligations, as a State party to several international human rights Conventions including CEDAW, CRC, and the ICCPR, to uphold equal nationality rights for women and men.[23]

15. JS2 underscored that despite the failure to pass the Constitutional Reform by which the State had committed to advance gender equal nationality rights, the State was obliged to continue to take further action to ensure the equal nationality rights of women and men, in accordance with its international obligations.[24]

16. JS2 considered that gender discrimination in nationality laws could result in significant violations of the rights of women, men and children, including: statelessness; lack of access to public education, healthcare and other services; increased risk of gender-based violence; unemployment and poverty; social alienation; and psychological damage. Gender discrimination in nationality laws also contributed to women's unequal status in society and within the family, and may result in the separation of family members.[25]

17. JS2 recommended that the Bahamas remove all remaining gender discriminatory provisions in the Constitution and Nationality Act in order to enshrine: married and unmarried women's ability to confer nationality on children and spouses on an equal basis with married and unmarried men; and the ability of men and women to confer nationality on children on an equal basis regardless of their sex, marital status, or pre-Independence birth outside of the country.[26]

2. Civil and political rights

Right to life, liberty and security of person[27]

18. JS1 indicated that the Bahamas had taken significant steps toward recognizing and protecting particular rights, but it has a great number of opportunities to better protect the human rights of its people, including by abolishing the death penalty.[28]

19. JS1 explained that the imposition of the death penalty in the Bahamas was no longer mandatory following the Judicial Committee of the Privy Council's decision in Bowe v. The Queen.[29] JS1 recalled that during the 2013 UPR review, many countries commended the Bahamas for its de facto moratorium on the death penalty and further requested that the Bahamas consider instituting a formal moratorium.[30] JS1 recommended that the Bahamas impose an official de jure moratorium on the death penalty. The Bahamas should impose a country-wide moratorium on the death penalty that immediately halts all sentences and executions, with a view toward complete abolition of the death penalty.[31]

20. JS1 stated that in 2012, the Prime Minister of the Commonwealth of the Bahamas appointed a second Constitutional Reform Commission to review the Constitution, gather

public feedback on several thematic issues, including the death penalty and make recommendations. In July of 2013, the Constitutional Reform Commission published a report of its recommendations, including retention of the death penalty. The Commission recommended a Constitutional amendment to ensure that the Executive would be able to carry out a prescribed death penalty.[32]

21. JS1 asserted that despite the Bahamian's Government and the Constitutional Reform Commission's consistent references to public support of the death penalty, it appeared that little had been done in the Bahamas since the 2013 UPR to promote and increase opportunities for public and open debates on the death penalty.[33] JS1 recommended that the Bahamas collaborate with abolitionist civil society organizations in the region to conduct a comprehensive public awareness-raising campaign to educate the public about international human rights standards and alternatives to the death penalty.[34] As the Bahamas cited public support for the death penalty as the primary obstacle to a formal moratorium, the country should undertake a public education campaign about human rights and alternatives to the death penalty in order to move the country closer to full abolition.[35]

22. JS1 warned that Government officials could use the country's increasing crime rate as a pretext for resuming executions, as crime was a significant problem in the Bahamas, and thus there was a serious threat that executions would resume in the Bahamas in the future.[36] JS1 recommended that the Bahamas abolish the death penalty and replace it with a sentence that was fair, proportionate and respects international human rights standards.[37]

23. JS1 asserted that public support—among politicians and private individuals—for the death penalty made it impossible to predict how the death penalty would be applied if the de facto moratorium were lifted. It was unclear whether the criminal justice system provided people accused of death-eligible crimes with a judicial process that complied with all minimum international safeguards—that is, those standards which are intended to prevent the arbitrary deprivation of life.[38]

24. JS1 stated that despite the country's stated practice of using the death penalty to punish only the "worst of the worst" crimes, the Bahamas did not follow the requirements dictated in Article 6(2) of the International Covenant on Civil and Political Rights, that the death penalty be imposed for only "the most serious crimes."[39] JS1 explained that the country allowed a death sentence for crimes which result in death, regardless of intent. Further, treason, defined as even the act of imagining or intending treason, was eligible for the death penalty.[40]

Administration of justice, including impunity and the rule of law[41]

25. JS1 referred to a number of problems in the judicial system in the Bahamas, including heavy caseloads, insufficient protection for witnesses, high levels of crime, weak forensic capacities, crime lab delays in processing evidence and lack of mental health assessments for the accused, could easily contribute to a miscarriage of justice in a capital case.[42] Additionally, in the early stages of proceedings, legal counsel was available only at the accused's expense, leaving a critical gap in legal defence.[43] JS1 recommended that the Bahamas ensure that all defendants have access to adequate and timely legal counsel immediately on arrest and throughout all subsequent criminal proceedings.[44]

26. JS1 indicated that procedural concerns regarding the right to a fair trial and access to appeals also impeded the Bahamian judicial system. In practice, many problems plagued the judicial system in the Bahamas, including heavy caseloads, insufficient protection for witnesses, high levels of crime, weak forensic capacities, crime lab delays in processing evidence and lack of mental health assessments for the accused.[45]

27. JS1 stated that the Bahamas Constitution allowed for accused persons to have access to counsel at all phases of criminal proceedings. For any person charged with a criminal

offense, the Constitution also guaranteed a fair hearing within a reasonable time by an independent and impartial court established by law. Nonetheless, in practice defendants were often left without access to legal aid if they could not afford it themselves, particularly in the early phases of the criminal proceedings.[46]

3. Economic, social and cultural rights

Right to health[47]

28. ADF stated that although medical infrastructure in the Bahamas was of a relatively high standard, it was still not of the same quality as more developed countries, and access to quality health-care services was less available in remote and poor areas.[48]

4. Rights of specific persons or groups

Women[49]

29. JS2 recalled that during the first Universal Periodic Reviews, several States encouraged The Bahamas to take steps to address discrimination against women and to withdraw reservations to the Convention on the Elimination of All Forms of Discrimination against Women, while five recommendations during the Second Cycle of the UPR[50] directly addressed the issue of gender discrimination in the nationality law of the Bahamas.[51] JS2 stated that the Bahamas had agreed to consider these recommendations, noting that the issue was presently before the Constitutional Reform Commission.[52]

30. JS2 indicated that of the 2015 Strategic Plan to Address Gender-Based Violence, and the previous Progressive Liberal Party's (PLP) "YES" campaign to encourage Bahamian voters in the failed 2016 Constitutional Referendum to vote yes to removing gender discriminatory provisions from Bahamian nationality law, the Bahamian Government had largely failed to follow through with the majority of recommendations that it "accepted" during the previous cycle of the UPR.[53] JS2 asserted that for example, the Bahamas had not ratified the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women and had not implemented a comprehensive strategy (or National Action Plan) to eliminate gender-based stereotypes.[54] JS2 also indicated that the current administration had not demonstrated a commitment to strengthening gender equality and eradicating gender discriminatory practices, but was rather seeking to promote urban renewal initiatives within the Department's purview.[55]

31. JS2 considered that by denying married women the equal rights to confer nationality on children born outside the country, adopted children, and spouses, The Bahamas's Constitution and Nationality Act violated women's nationality rights and international human rights standards.[56]

32. JS2 explained that while women's inability to equally confer citizenship on children and spouses was particularly relevant to the Convention on the Elimination of all forms of Discrimination against Women, the nationality law's discrimination against single fathers was also pertinent to the perpetuation of discrimination against women, in particular its impact on traditional stereotypes that negatively impacted women. By denying single fathers the right to confer nationality on children on an equal basis with single mothers, the State was implicitly endorsing and reinforcing the notion that the responsibilities of parenting 'naturally' belonged exclusively to the mother. This was contrary to the idea of equality between the sexes, and undermined women's equality in professional, public and cultural life.[57]

33. JS2 indicated that the Bahamian electorate's rejection of the insertion of "sex" into the Constitution as a prohibited ground for discrimination at the failed Constitutional

Referendum posed a significant threat to equality. The fact that the highest law in the land did not prohibit discrimination based upon sex was likely to be a contributing factor in fomenting a culture where women were not considered equal to their male counterparts. The inequality bred by the lack of this provision was likely related to the high incidence of violence against women that was found in Bahamian society."[79]

34. ADF indicated that every maternal death was a tragedy, as it devastated the woman's family, in particular the woman's children, and affected the entire community socially and economically. It considered that the high number of maternal deaths in the Bahamas was a pressing and urgent human rights concern.[80] ADF asserted that although most women in the Bahamas received some level of prenatal care during their pregnancies, it was estimated by the United Nations Children's Emergency Fund in 2012 that over 15% did not receive even the minimum of four visits recommended by the World Health Organization.[81]

35. ADF considered that given the maternal health crisis in the Bahamas, resources should focus on improving conditions for pregnant women, women undergoing childbirth and postpartum women.[82] ADF recommended, inter alia, improving health care infrastructure, access to emergency obstetric care, midwife training, and resources devoted to maternal health. It recommended that the Bahamas focus on safely getting mothers and babies through pregnancy and childbirth, with special attention paid to improving health-care access for women from poor and/or rural backgrounds. It also recommended that the Bahamas review sex education programs to ensure that they are age-appropriate.[83]

Children[84]

36. GIEACPC stated that since the second cycle review in 2013, the Prisons Act 1943 that provided for corporal punishment as a disciplinary measure in penal institutions was repealed by the Correctional Services Act 2014, which did not however repeal other legislation authorising corporal punishment in this setting or explicitly prohibit its use. The Early Childhood Care (National Standards) Regulations were also enacted in 2015 and prohibited the use of corporal punishment in day care centres and pre-schools. It asserted that corporal punishment was still lawful in every other setting of children's lives.[85]

37. GIEACPC indicated that in the Bahamas, corporal punishment appeared to be unlawful in penal institutions, but it was not fully prohibited in the home, in all forms of alternative care and day care settings, in schools and as a sentence for a crime.[86] It stated that in the Bahamas, corporal punishment was then lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the second cycle UPR of the Bahamas in 2013.[87] It expressed its hope that states will raise this issue during the UPR of 2018 and make a specific recommendation that the Bahamas clearly prohibit all corporal punishment of children, however light, in every setting of their lives including the home and as a sentence of the courts.[88]

38. JS2 emphasized that gender discrimination in the Constitution and nationality law of The Bahamas resulted in violations of every child's right to acquire and retain a nationality.[89] Bahamian law was contrary to provisions of the Convention on the Rights of the Child, as children's ability to acquire the nationality of their Bahamian mother or father was dependent upon the parent's gender and marital status. The denial of the child's right to a nationality due to discrimination against their parents on the bases of sex, marital status, or other grounds, was a violation of the Convention on the Rights of the Child. In addition, Bahamian women's inability to confer nationality on their foreign spouses threatened a child's right to know and be cared for by his or her parents, and infringed upon a child's right to family unit.[90] JS2 recommended that the Bahamas take steps to ensure that all children and adults who have been denied access to Bahamian citizenship due to gender

discriminatory nationality laws, are granted nationality and in the interim, that they fully enjoy their other human rights on a non-discriminatory and equal basis.[70]

39. JS2 underscored that children denied Bahamian nationality due to gender discrimination in the nationality laws may also suffer from violations of their right to healthcare and to education and expressed that human rights of equal protection under the law and non-discrimination on the basis of sex were not legitimately subject to majority opinion, but must be upheld by the State.[71]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

Civil society

Individual submissions:

ADF International	Alliance Defending Freedom International (Geneva), Switzerland;
GIEACPC	Global Initiative to End all forms of Corporal Punishment of Children, London (United Kingdom of Great Britain and Northern Ireland).

Joint submissions:

JS1	**Joint submission 1 submitted by**: The Advocates for Human Rights, The Greater Caribbean for Life and The world Coalition against the Death Penalty;
JS2	**Joint submission 2 submitted by**: Global Campaign for Equal Nationality Rights and Institute on the Statelessness and inclusion (ISI).

[2] The following abbreviations are used in UPR documents:

ICESCR	International Covenant on Economic, Social and Cultural Rights;
OP-ICESCR	Optional Protocol to ICESCR;
CRC	Convention on the Rights of the Child;
OP-CRC-IC	Optional Protocol to CRC on a communications procedure;
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Convention on the Rights of Persons with Disabilities;
OP-CRPD	Optional Protocol to CRPD.

[3] For relevant recommendations, see A/HRC/23/8, paras. 92.1-92.10, 92.12-92.17, 92.21-92.26, and 92.68.

[4] JS1, p. 1.

[5] JS1, p. 5.

[6] JS2, p. 9.

[7] JS2, p. 3.

[8] JS2, p. 9.

[9] JS2, p. 4.

[10] JS2, p. 9.

[11] For relevant recommendations, see A/HRC/23/8, paras. 92.19, 92.20, 92.29, 92.30, 92.35-92.37.

[12] JS1, pp. 1 and 2.

[13] JS1, p. 1.

[14] JS2, p. 4.

[15] JS2, p. 9.

[16] For relevant recommendations, A/HRC/23/8, paras. 92.76-92.84.

[17] JS2, p. 4.

[18] JS2, p. 5.

[19] JS2, p. 5.

[20] JS2, p. 5.
[21] JS2, p. 5.
[22] JS2, p. 5.
[23] JS2, pp. 5 and 6.
[24] JS2, p. 3.
[25] JS2, p. 8.
[26] JS2, p. 9.
[27] For relevant recommendations, see A/HRC/23/8, paras. 92.37 and 92.45-92.52.
[28] JS1, p. 3.
[29] JS1, p. 2.
[30] JS1, p. 1.
[31] JS1, p. 5.
[32] JS1, p. 3.
[33] JS1, p. 4.
[34] JS1, p. 4.
[35] JS1, p. 5.
[36] JS1, p. 4.
[37] JS1, p. 5.
[38] JS1, pp. 2 and 3.
[39] JS1, p. 4.
[40] JS1, p. 4.
[41] For relevant recommendations, A/HRC/23/8, paras.92.54, 92.55, 92.69, 92.74 and 92.75.
[42] JS1, p. 4.
[43] JS1, p. 4.
[44] JS1, p. 5.
[45] JS1, p. 4.
[46] JS1, p. 2.
[47] For relevant recommendations, A/HRC/23/8, paras.92.85 and 92.87.
[48] ADF, p. 3.
[49] For relevant recommendations, A/HRC/23/8, paras 92.31-92-34, 92.38-92.43, and 92.56-92.62.
[50] Recommendations 92.39 (Paraguay), 92.40 (Peru), 92.41 (Slovakia), 92.42 (Thailand), 92.43 (Guatemala).
[51] JS2, p. 2.
[52] JS2, p. 2.
[53] JS2, p. 3.
[54] JS2, p. 3.
[55] JS2, p. 3.
[56] JS2, p. 6.
[57] JS2, p. 6.
[58] JS2, p. 8.
[59] ADF, p. 4.
[60] ADF, p. 4.
[61] ADF, p. 4.
[62] ADF, p. 6.
[63] For relevant recommendations, see A/HRC/23/8, paras. 92.28, 92.63-92.67 and 92.69.
[64] GIEACPC, p. 1.
[65] GIEACPC, p. 2.
[66] GIEACPC, p. 1.
[67] GIEACPC, p. 1.
[68] JS2, p. 7.
[69] JS2, p. 7.
[70] JS2, p. 9.
[71] JS2, p. 5.